10/18/2016 DRAFT CAFO sent to Whole Foods Market with WFM Revisions – EPA edits 11-10-2016 – WFM Revisions 12-1-16 – EPA edits 12-13-16

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

IN THE MATTER OF:	)	EPA Docket No.
	)	RCRA-HQ-2016-____
	)	
	)	
Whole Foods Market Group, Inc.,	)	Proceeding Under Section 3008(a) of the
Whole Foods Market California, Inc.,	)	Resource Conservation and Recovery Act,
Mrs. Gooch's Natural Food Markets, Inc.,	)	42 U.S.C. § 6928(a)
Whole Foods Market Pacific Northwest, Inc.,	)	
Whole Foods Market Rocky Mountain/	)	
Southwest, L.P.,	)	
WFM Northern Nevada, Inc.,	)	
WFM Southern Nevada, Inc.,	)	
WFM Hawaii, LLC, and	)	
WFM Kansas, LLC,	)	
	)	
RESPONDENTS.	)	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. Complainant, the United States Environmental Protection Agency ("EPA"), and Respondents, Whole Foods Market Group, Inc., a Delaware corporation, Whole Foods Market California, Inc., a California corporation, Mrs. Gooch's Natural Food Markets, Inc., a California corporation, Whole Foods Market Pacific Northwest, Inc., a Delaware Corporation, Whole Foods Market Rocky Mountain/Southwest, L.P., a Texas limited partnership, WFM Northern Nevada, Inc., a Delaware Corporation, WFM Southern Nevada, Inc., a Delaware Corporation, WFM Hawaii, LLC, a Hawaii limited liability company, and WFM Kansas, LLC, a Kansas limited liability company (collectively the "Respondents" or "Whole Foods Market"), hereby enter into this Consent Agreement ("Agreement" or "Consent Agreement"), and the attached proposed Final

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Order (collectively, the "CAFO") before taking testimony and without adjudication of any issues of fact or law herein.

2. Complainant and Respondents, having conferred for the purposes of settlement pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. § 22.18, and expressing a mutual desire to enter into a global agreement covering the Whole Foods Market Stores identified in Appendix A of this CAFO, which is attached hereto and incorporated by reference herein, have agreed to the execution of this CAFO. Respondents hereby agree to comply with the terms of this CAFO.

3. For the purposes of this CAFO and in accordance with the specific requirements for settlement set forth in 40 C.F.R. § 22.18(b)(2):

a. Respondents admit the jurisdictional allegations set forth in this CAFO;

b. Respondents neither admit nor deny the factual allegations and legal conclusions contained in this CAFO;

c. Respondents consent to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO;

d. Respondents consent to the terms and conditions specified in the compliance provisions set forth in this CAFO; and

e. Respondents consent to perform the Supplemental Environmental Projects set forth in this CAFO.

4. The Respondents waive any right they may have to contest the allegations set forth in this CAFO and any right to appeal the proposed Final Order set forth herein. 40 C.F.R. §

22.18(b)(2). Respondents do not waive any claims or defenses Respondents have to the interpretation of this CAFO or its terms.

II. THE PARTIES

5. Gregory Sullivan, Acting Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized, by lawful delegation, to initiate and settle civil administrative actions brought pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments ("HSWA") of 1984 (collectively, "RCRA"), 42 U.S.C. § 6928(a).

6. Respondents own and operate the Whole Foods Market Stores identified in Appendix A, as specified therein, of this CAFO.

III. JURISDICTION

7. The parties agree to the commencement and conclusion of this matter through the issuance of this CAFO, which is authorized pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

8. RCRA Subtitle C (42 U.S.C. § 6921 *et seq.*) and its implementing regulations, set forth in 40 C.F.R. Parts 260-279, comprise EPA's RCRA hazardous waste program. Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), allows the Administrator to authorize a state to administer its own ~~provides that EPA may authorize a state to administer the RCRA~~ hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.[1] A violation of a state provision authorized pursuant to Section 3006 of RCRA, 42

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[1] Each of the Affected States and Territories described herein, with the exception of Iowa, have received authorization to administer the base RCRA hazardous waste program (requirements imposed by the Solid Waste Disposal Act prior to the Hazardous and Solid Waste Amendments of 1984) in lieu of the federal government's program. Not all the

U.S.C. § 6926, constitutes a violation of a requirement of Subtitle C, and is subject to the assessment of civil penalties and issuance of compliance orders by EPA as provided by Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

9. Pursuant to RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), notice of the commencement of this action has been given to all Affected States and Territories.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in the CAFO that are defined in RCRA, 42 U.S.C. §§ 6901 *et seq.*, or in regulations promulgated under RCRA, 40 C.F.R. Parts 260-279, or in a state's authorized hazardous waste program, shall have the same meaning in this CAFO as such term has under RCRA or under federal or applicable authorized state regulations. In the case of a conflict between federal and state definitions, federal definitions shall control. Whenever terms defined below are used in this CAFO, such definitions shall apply:

a. "Affected State and Territory" means a state or territory of the United States in which a Whole Foods Market Store is located as identified in Appendix A of this CAFO. Oklahoma, Texas, Louisiana, New Mexico, and Arkansas are not Affected States for purposes of this CAFO.

b. "Business Day" means any day other than Saturday, Sunday, or a federal or legal holiday.

c. "Conditionally Exempt Small Quantity Generator" means a facility that generates 100 kg of hazardous waste or less in a calendar month.

Affected States and Territories described herein are authorized to administer the Universal Waste regulations at 40 C.F.R. Part 273. Thus, where applicable, citations to the Code of Federal Regulations is a citation to the corresponding regulations contained within the Affected State's or Territories' authorized RCRA hazardous waste program.

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d. "Confidential Business Information" or "CBI" shall have the same definition as in 40 C.F.R. §§ 2.201-2.406.

e. "Consent Agreement and Final Order" or "CAFO" shall mean this Consent Agreement and attached Final Order and all Appendices hereto. In the event of conflict between this Consent Agreement and any Appendix, this Consent Agreement shall control.

f. "Consumer Products" shall mean any merchandise sold by Respondents at Whole Foods Market Stores, which if discarded, may have to be managed as RCRA hazardous waste.

g. "Day" means a calendar day unless expressly stated to be a business day. In computing any period of time under this CAFO, where the last day would fall on a Saturday, Sunday, or federal, legal or Affected State or Territory holiday, the period shall run until the close of business of the next business day.

h. "Effective Date" is defined in Section XVIII of this CAFO.

i. "EPA" means the United States Environmental Protection Agency.

j. "Large Quantity Generator" means a facility that generates 1000 kg or more of hazardous waste in a calendar month.

k. "Notify" and "Submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, send via electronic mail, deposit in the U.S. mail or dispatch by express courier so that such transmission or communication arrives to the designated recipient by close of business on the day required by this CAFO. If that required day is not a Business Day then the delivery, deposit, or dispatch shall be made by the close of business the next Business Day.

l. "Paragraph" shall mean a portion of this CAFO identified by an arabic numeral and, in some cases, an associated lower case letter.

m. "Parties" shall mean Complainant and all Respondents.

n. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

o. "Respondents" mean the entities described in Paragraphs 1 and 6 of this CAFO.

p. "Retail Associate" means a Whole Foods Market Store employee, including store leadership and team members.

q. "Section" shall mean a portion of this CAFO identified by a roman numeral.

r. "Small Quantity Generator" means a facility that generates more than 100 kg and less than 1000 kg of hazardous waste in a calendar month.

s. "Small Quantity Handler of Universal Waste" means a generator of universal waste that does not accumulate 5,000 kilograms or more of universal waste (e.g., batteries, mercury-containing equipment, or fluorescent lamps, calculated collectively) at any time. 40 C.F.R. § 273.9.

t. "Solid Waste" means any discarded material that is not excluded under 40 C.F.R. § 261.4(a) or that is not excluded by variance granted under §§ 260.30 and 260.31.

u. "Stores," "Facilities," or "Whole Foods Market Stores" mean Whole Foods Market retail grocery stores, or any future Whole Foods Market retail grocery store (including "365 by Whole Foods Market" stores), located in the United States (including Puerto Rico and other U.S. territories).

v. "United States" means the United States of America, and all of its departments, agencies, and instrumentalities.

w. "Universal Waste" means certain hazardous wastes that are subject to the universal waste requirements of 40 C.F.R. Part 273, including fluorescent lamps. 40 C.F.R. §§ 273.1 and 273.9.

V. EPA ALLEGATIONS AND DETERMINATIONS

11. Each Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

12. Respondents own and operate the Stores identified in Appendix A, as specified therein, of this CAFO. The stores identified in Appendix A are "facilities" within the meaning of 40 C.F.R. § 260.10.

13. Respondents sell Consumer Products, some of which may become "solid waste" when they are returned, expired, spill or are in a condition such that they cannot be used for their intended purpose.

14. Some of the Consumer Products that become solid waste may be considered hazardous waste under federal or state law by having the characteristic of ignitability (D001), corrosivity (D002), or toxicity (D007, D010, D009, and D011).

15. Most, if not all, Whole Foods Market Stores generate 100 kilograms ("kg") of hazardous waste or less in any given month, and therefore, are considered Conditionally Exempt Small Quantity Generators ("CESQGs") pursuant to 40 C.F.R. § 261.5. As CESQGs, the Stores are exempt from regulation under the hazardous waste generator requirements at 40 C.F.R. Part 262 and the notification requirements of RCRA Section 3010 in any given month, provided that the requirements in 40 C.F.R. § 261.5 are met.

16. Between August 2014 and August 2015, EPA Region 6 conducted an investigation of Whole Food Company, Inc. and Respondent Whole Foods Market Rocky Mountain/Southwest,

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L.P.'s Stores located in Texas, Oklahoma, New Mexico, Louisiana and Arkansas (the "Investigation"). From the Investigation, EPA Region 6 concluded that a sufficient hazardous waste determination was not consistently made on all solid waste streams as required by 40 C.F.R. § 262.11(c), and one or more of the universal waste requirements set forth in 40 C.F.R. §§ 273.13 through 273.16 were not consistently complied with.

17. As a result of the Investigation, EPA Region 6, Whole Food Company, Inc. and Respondent Whole Foods Market Rocky Mountain/Southwest, L.P. entered into consent agreements and final orders for the Stores located within EPA Region 6's jurisdiction (the "Region 6 CAFOs").[2]

18. Following the Investigation and Region 6 CAFOs, ~~Although EPA has not conducted its own investigation of the Stores located outside of Texas, Oklahoma, New Mexico, Louisiana and Arkansas,~~ Respondents and EPA engaged in discussions that led to the Parties agreeing ~~have mutually agreed~~ to enter into a similar settlement agreement for Stores located in the Affected States and Territories, other than those covered by the Region 6 CAFOs. As part of the settlement discussions, Respondents informed EPA that there were no

~~19. EPA has not identified any~~ spills, leaks or releases at or from Respondents' Facilities, nor has EPA identified any such spills, leaks or releases.

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~~20.~~19. The Parties ~~EPA and Respondents have engaged in expedited~~ discussions ~~to reach~~ have resulted in the agreement contained herein, which includes implementation of an enhanced hazardous waste management system in all of Respondents' Stores. This enhanced hazardous waste management system is designed to ensure the proper management of hazardous wastes at all Whole Foods Market Stores, and in many respects goes beyond the minimum requirements

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[2] *See* USEPA Docket Nos. RCRA-06-2016-0904 through 0908.

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necessary for compliance with the applicable federal and state hazardous waste laws and regulations. This program is more fully described in Paragraphs ___ of this CAFO and appendices___.

~~21.~~20. Respondents have already taken steps toward implementing their enhanced hazardous waste management program, prior to the Effective Date of this CAFO.

Hazardous Waste Determinations

~~22.~~21. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste is required to determine if that waste is hazardous.

~~23.~~22. Based upon the terms of the Region 6 CAFOs, and without a nationwide ~~any independent~~ investigation, or any admission of liability ~~or guilt~~ by Respondents, EPA has concluded that Respondents did not make sufficient hazardous waste determinations at all Whole Foods Market Stores as required by 40 C.F.R. § 262.11.

Universal Waste Management

~~24.~~23. Pursuant to 40 C.F.R. § 273.10, a small quantity handler of universal waste must comply with the applicable requirements at 40 C.F.R. §§ 273.10 through 273.20.

~~25.~~24. Based upon the terms of the Region 6 CAFOs, and without a nationwide ~~any independent~~ investigation, or any admission of liability ~~or guilt~~ by Respondents, EPA has concluded that Respondents did not sufficiently comply with some of the standards set forth in 40 C.F.R. §§ 273.13 through 273.16 at all Whole Foods Market Stores.

VI. TERMS OF SETTLEMENT

~~26.~~25. Based on the foregoing, the Parties agree to the entry of this Consent Agreement on the terms set forth herein.

A. Compliance Provisions

~~27.~~26. Although a majority of Whole Foods Market Stores may qualify as CESQGs in any given month, pursuant to 40 C.F.R. § 261.5, the enhanced hazardous waste management program implemented by Respondents at Whole Foods Market Stores, as referenced in Paragraphs ___ through ___ and Appendices ___ through ___ of this CAFO, generally seeks to satisfy the hazardous waste generator requirements applicable to Small Quantity Generators ("SQGs") and, therefore, goes above and beyond the minimum requirements applicable under the law.

~~28.~~27. As a condition of settlement, Respondents agree to implement the following measures as part of their enhanced hazardous waste management program:

a. If applicable, Respondents shall obtain an EPA identification number for a Whole Foods Market Store pursuant to 40 C.F.R. § 262.12.

b. Respondents must make a hazardous waste determination on all solid waste generated in its Stores pursuant to 40 C.F.R. § 262.11. As a means of complying with this requirement, Respondents have implemented, and will continue to implement Regional and/or State-specific hazardous waste determination guidance charts. These Regional and/or State-specific hazardous waste determination guidance charts are described and set forth in Appendix B of this CAFO. These charts are marked as and considered Confidential Business Information pursuant to 40 C.F.R. Part 2.

c. Respondents must implement an electronic hazardous waste identification system as follows:

i. Within ___ months~~days~~ of the Effective Date of this CAFO, Respondents will hire a third-party consultant to review the Consumer Products at its Stores, and determine whether those

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Consumer Products, if discarded, would become hazardous waste pursuant to federal and state law and regulations.

ii. The third-party consultant Aafter identifying the potentially hazardous items are identified, the third-party consultant or other qualified personnel will load the information into Respondents' electronic hazardous waste identification system for use at Whole Foods Market Stores in identifying and classifying all solid waste streams, which may include the use of hand-held scanners, in-store computer terminal, or other computer-based system(s).

c iii. Within ____ months of the Effective Date of this CAFO, the Respondents' electronic hazardous waste identification system will be fully implemented at its Stores. This system is described and set forth in Appendix C of this CAFO. This system is marked as and considered Confidential Business Information pursuant to 40 C.F.R. Part 2.

d. To the extent Consumer Products become hazardous waste, Respondents have implemented, and will continue to implement a system to properly accumulate and store hazardous waste on-site per many of the requirements applicable to SQGs, including, but not limited to, inspections and management of containers. This system, commonly referred to as the "bucket" or "tote" system, accumulates and stores hazardous waste until it is picked up by a licensed hazardous waste hauler for proper off-site transport and disposal. Under this system, Respondents maintain

records, such as manifests, to demonstrate proper off-site transport and disposal at their Stores. The "bucket" or "tote" system and the associated quick-reference materials for Retail Associates are further described and set forth in Appendix ~~C~~D of this CAFO. This system is marked as and considered Confidential Business Information pursuant to 40 C.F.R. Part 2.

e. Respondents have implemented, and will continue to implement hazardous waste management trainings at its Stores for all Retail Associates. The hazardous waste management training materials for Retail Associates are further described in Attachment ~~D~~E of this CAFO. The training materials are marked as and considered Confidential Business Information pursuant to 40 C.F.R. Part 2.

~~29.~~28. In order to assist its Stores in implementing Respondents' enhanced hazardous waste management program described in Paragraph 27~~35~~ of this CAFO, Respondents will develop and implement standard operating procedures ("SOPs") for use by Retail Associates at their Stores. These SOPs will be available and accessible to Retail Associates. These procedures are further described in Attachment ~~E~~F of this CAFO. The SOPs are marked as and considered Confidential Business Information pursuant to 40 C.F.R. Part 2.

29. No later than March 31, 2018, and annually thereafter until termination of this CAFO, Respondents must submit an annual report to EPA for the preceding calendar year that shall include: a list of any items identified by the third-party consultant described in Paragraph 27(c)(i); implementation progress of its electronic hazardous waste identification system described in Paragraph 27(c)(ii) and (iii), including a description of the technology used for the system; and any other changes or updates associated with its enhanced hazardous waste management program,

as described in Paragraphs 27 and 28 and Appendices ____ of this CAFO. These annual reports will be marked as and considered Confidential Business Information pursuant to 40 C.F.R. Part 2.

30. Third Party Audit [To Be Discussed]

31. In all instances in which this CAFO requires written submission to EPA, each submission must be signed by a responsible corporate officer of Whole Foods Market and include the following certification: ~~Respondents must certify that they are complying with the requirements set forth in Paragraphs _____ above, within _____ days of the schedule provided for completion in Appendix _____. The certification and supporting documentation should be provided to:~~

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all documents submitted herewith, that, to the best of my knowledge and belief, the submitted information is true, accurate, and complete; and that all documents submitted herewith are complete and authentic, unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.
>
> ~~Greg Sullivan, Acting Division Director~~
> ~~Waste and Chemical Enforcement Division~~
> ~~Office of Civil Enforcement~~
> ~~U.S. Environmental Protection Agency~~
> ~~1200 Pennsylvania Ave., N.W. (2249A)~~
> ~~Washington, DC 20460~~

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B. Civil Penalty

32. Respondents agree to pay a civil penalty in the sum of $_____ within thirty (30) days of the Effective Date of this CAFO.

33. Respondents must pay the assessed civil penalty by either cashier's check, certified check, or wire transfer, made payable to: **Treasurer, United States of America**. Payment must be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
Phone No. (314) 425-1818

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA Routing Number: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"

The case name and document number (In the Matter of Whole Foods Market Group, Inc., et. al., Docket No. RCRA-HQ-2016-____) must be clearly documented on or within Respondents' chosen method of payment to ensure proper credit.

34. Respondents shall submit a copy of the payment to the following addresses:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Laura Welles, Attorney-Advisor
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, N.W. (MC 2249A)
Washington, D.C. 20460

35. Penalties paid pursuant to this CAFO are not deductible for federal purposes under 26 U.S.C. § 162(f).

36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. In accordance with 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondents must pay the following amounts on any amount overdue:

a. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

b. Monthly Handling Charge. Respondents must pay a late payment handling charge of fifteen ($15.00) on any late payment, with an additional charge of $15.00 for each subsequent thirty (30) day period over which an unpaid balance remains.

c. Non-payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondents must pay a non-payment penalty charge of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. 40 C.F.R. § 13.11(c). This non-payment penalty charge is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

C. Supplemental Environmental Project

37. [Terms TBD]

D. Delay in Performance/Stipulated Penalties

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38. Respondents shall be liable for stipulated penalties to the EPA, as specified below, for failure to comply with the requirements of this CAFO, unless excused by EPA in its sole discretion. Respondents must pay stipulated penalties for the following obligations in the amounts set forth below: (a) for failure to timely submit reports; for failure to complete SEPs; or for failure to comply with Paragraphs ____ of this CAFO.

Period of Failure to Comply	Penalty Per Violation Per Day
1st through 7th day	$100.00
8th through 21st day	$250.00
22nd through 30th day	$500.00
Greater than 30 days	$1,000

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~~37.~~39. Payment of stipulated penalties will not alter in any way Whole Foods Market's obligation to comply with the requirements of this CAFO.

VII. DISPUTE RESOLUTION

~~38.~~40. The dispute resolution procedures set forth in this Section shall be the exclusive mechanism to resolve any disputes arising under or with respect to this CAFO.

~~39.~~41. The Parties agree to meet and confer informally and in good faith to resolve all disputes arising from this CAFO. If Respondents disagree, in whole or in part, with any decision by EPA regarding this CAFO, Respondents agree to notify EPA, through the Chief of the Waste Enforcement Branch, and the Parties agree to use best efforts to informally and in good faith

resolve their dispute. If EPA disagrees, in whole or in part, with any action or inaction taken by a Respondent under this CAFO, EPA agrees to notify Respondent, and the Parties agree to use their best efforts to informally and in good faith resolve their dispute.

VIII. OTHER MATTERS

42. Respondents' full compliance with this Consent Agreement shall only resolve Respondents' liability for federal civil penalties for the violations alleged in Section V (EPA Allegations and Determinations) of this CAFO. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

~~40.~~43. Nothing in this CAFO shall relieve Respondents of the duty to comply with all applicable provisions of RCRA and any other federal, state, or local laws and regulations.

44. Notwithstanding any other provision of this CAFO, nothing in this CAFO shall be construed to limit the authority of the EPA to take any action against Respondents to address conditions that may present an imminent and substantial endangerment to human health or the environment. Complainant reserves the right to take enforcement action against Respondents for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CAFO.

~~41.~~45. ~~EPA and Respondents agree that Respondents reserve all of their rights and defenses should this Consent Agreement be voided in whole or in part.~~ EPA and Respondents ~~further~~ agree that Respondents' have no obligations under this Consent Agreement ~~will cease~~ should it ~~this Agreement~~ be rejected by the Environmental Appeals Board (the "EAB"); provided, however, that in the event that the EAB expresses any objections to, or its intent to reject this

Consent Agreement, the Parties agree that they shall exercise their mutual best efforts to address and resolve the EAB's objections.

~~42.~~46. Unless specifically allowed under the terms of this CAFO, this CAFO may be amended or modified only by written agreement executed by both the EPA and each Respondent.

47. The terms of this CAFO bind the Respondents and their successors and assigns.

~~43.~~48. The undersigned representative of each party to this CAFO certifies that each is duly authorized by the party whom he or she represents to enter into these terms and conditions and to legally bind that party to it.

~~44.~~49. Unless otherwise specified herein, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it must be directed to the individuals specified below at the addresses given, unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Waste Enforcement Branch
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (MC 2249A)
Washington, D.C. 20460

Respondents:

Whole Foods Market Central Office
Attn: John H. Hempfling II
550 Bowie Street
Austin, TX 78703

With copy to:

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King Williams LLP
Attn: Jennifer Hartman King
520 Capitol Mall, Ste 750
Sacramento, CA 95814

~~45.~~50. At such time as the Respondents believe it has completed all of the requirements of this CAFO, Respondents shall so certify in writing and in accordance with the certification language set forth in Paragraph 31. Unless EPA objects in writing within sixty (60) days of receipt of Respondents' certification, then this CAFO shall terminate on the basis of Respondents' certification.

~~46.~~51. The headings in this CAFO are for convenience of reference only and shall not affect the interpretation of this CAFO.

~~47.~~52. The Parties to this CAFO shall bear their own costs and attorneys' fees in this matter.

~~48.~~53. The Effective Date of this CAFO is the date the Final Order is filed with the ~~Environmental Appeals Board (the "~~EAB~~")~~. 40 C.F.R. §§ 22.18(b)(2) and 22.31(b).

~~49. EPA and Respondents agree that Respondents reserve all of their rights and defenses should this Consent Agreement be voided in whole or in part. EPA and Respondents further agree that Respondents' obligations under this Consent Agreement will cease should this Agreement be rejected by the EAB; provided, however, that in the event that the EAB expresses any objections to, or its intent to reject this Consent Agreement, the Parties agree that they shall exercise their mutual best efforts to address and resolve the EAB's objections.~~

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10/18/2016 DRAFT CAFO sent to Whole Foods Market with WFM Revisions – EPA edits
11-10-2016 – WFM Revisions 12-1-16 – EPA edits 12-13-16

AGREED AND CONSENTED TO:

FOR COMPLAINANT:

Date: _____

_____
Greg Sullivan, Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: _____

_____

(Counsel for Complainant)
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

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FOR RESPONDENT WHOLE FOODS MARKET GROUP, INC.:

Date: _____ _____

FOR RESPONDENT WHOLE FOODS MARKET CALIFORNIA, INC.:

Date: _____ _____

FOR RESPONDENT MRS. GOOCH'S FOOD MARKETS, INC.:

Date: _____ _____

FOR RESPONDENT WHOLE FOODS MARKET PACIFIC NORTHWEST, INC.:

Date: _____ _____

FOR RESPONDENT WHOLE FOODS MARKET ROCKY MOUNTAIN/SOUTHWEST, L.P.:

Date: _____ _____

FOR RESPONDENT WFM NORTHERN NEVADA, INC.:

Date: _____ _____

FOR RESPONDENT WFM SOUTHERN NEVADA, INC.:

Date: _____ _____

FOR RESPONDENT WFM HAWAII, LLC:

Date: _____ _____

FOR RESPONDENT WFM KANSAS, LLC:

Date: _____ _____